such restrictions could, as a practical matter disrupt services and competition because the failure to utilize all the power of new equipment would artificially impose inefficiencies on some CLECs. Because price is one of the most important factors to consumers in judging the overall quality of competing services, restrictions on functionality could require competitors to provide service of a significantly lower quality if the added functionality affected price. Accordingly, as long as the primary function of a given piece of equipment is for interconnection and access to UNEs, CLECs should be allowed to deploy all other reasonable functions of such equipment.

This test should apply regardless of whether the additional functions involve services not strictly defined as telecommunications services.. The distinction between telecommunications and non-telecommunications services in the marketplace is blurring, and carriers must be able to offer a variety of services, including voice, video, fax, and Internet service, in order to be competitive. Of course, functions totally unrelated to telecommunications should continue to be prohibited.

Qwest does not believe that the standard suggested above would need to evolve as manufacturers develop equipment having additional capabilities. As long as the primary function and use of the equipment is for interconnection or access to UNEs, then the CLEC should be allowed to collocate the equipment—regardless of any additional or ancillary functions that the equipment may perform.

In response to the Commission's query whether the deployment of equipment that provides no functionalities other than those directly related to, required for, or indispensable to interconnection or access to unbundled network elements would consume more or less space in the incumbent's premises than would equipment that has multiple functions,[11] it is Qwest's experience that there is no necessary correlation between functionality and size. Moreover, there is no reason to conclude that newer equipment with multiple functions will require more space than older, single-function equipment used solely for interconnection or access to UNEs—though it may require more power or HVAC. In fact, given that a newer piece of equipment might be both multi-functional *and* smaller than its predecessor, there is no reason to believe that the approach recommended here will result in more rapid space exhaustion. If actual experience later contradicts this conclusion, the Commission can deal with it upon a more complete record at that time.

Moreover, Qwest believes that limiting CLECs to the use of outdated equipment or otherwise restricting a CLEC's use of multi-functional equipment collocated on incumbent LEC premises would hurt the efficiencies of both incumbent LEC and CLEC and, therefore, competition. There does not appear to be a good reason to adopt rules that motivate or direct this result.

[11] *Second Further Notice* at ¶ 80.

B. Removal of Obsolete Equipment

In the *Second Further Notice*, the Commission noted that rule 51.321(i)[12] requires incumbent LECs to remove obsolete unused equipment from their premises in certain circumstances in order to increase the space available for collocation, and invited comment on whether it must preclude collocators, including incumbent LEC affiliates, from deploying state-of-the-art equipment in the space made available through the operation of this rule.[13] Qwest sees nothing in this that should operate to prevent the deployment of advanced technologies; indeed, its opposite is true. Unless there is a plan for incumbent LEC use of this space, Qwest believes that such reclaimed space should be made available to collocators (including incumbent LEC affiliates) on a first-come, first-served and non-discriminatory basis. As stated above, such collocators should be allowed to collocate equipment, the primary function and use of which is interconnection or access to UNEs, and which otherwise meets the requirements of section 251(c)(6). .

C. Functionality of Equipment CLECs Seek to Collocate.

In the *Second Further Notice*, the Commission sought comment from CLECs on the particular functionalities of the equipment they seek to collocate and an explanation of how each functionality is necessary for interconnection, access to unbundled network elements, or both.[14] Qwest believes that to be able to compete outside of Qwest's 14-state-incumbent LEC region as a CLEC/DLEC, it will need to

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[12] 47 C.F.R. § 51.321(i).

[13] *Second Further Notice* at ¶ 77.

capitalize on all of the network efficiencies that will derive from state of the art equipment that integrates functionalities in one unit and pushes optical-type architecture outward in the network from the central office. The incumbent LECs will be permitted to install and fully utilize such equipment and CLECs must be able to do so as well, subject to the provisions of the Act. If CLECs were prohibited from collocating and fully utilizing such equipment, CLECs would be forced to backhaul traffic to their own hubs to perform those functions, thereby decreasing the efficiency of their networks and placing them at a needless competitive disadvantage to the incumbent LEC.

Presently, as a CLEC, Qwest is working with vendors on next generation transport technology that will integrate ATM functions, ethernet functions, and SONET functions all in the same "box." In order to capitalize on the dark fiber UNE, Qwest will need to collocate multi-functional equipment in central offices to perform transport and other functions for Qwest's fiber network. Such multi-functional equipment is currently located at Qwest's own hub sites. The aggregation and switching functions that presently occur at the Qwest hubs will have to occur at the incumbent LEC CO. Dark fiber is the limiting factor and the electronics must be available at central offices to maximize its network efficiency.

While current xDSL technology is used primarily for interconnection with conditioned loops to provide broadband, the next generation DSLAMs will have additional functionalities, potentially including switching functions. ATM

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[14] *Second Further Notice* at ¶ 81.

technology is also moving toward combinations of ATM functionalities and SONET functionalities, which would allow traffic on the network side of a DSLAM to go directly onto an optical-type architecture instead of coming onto the network side of the DSLAM as DS1 or DS3. This makes the network more efficient by pushing the optical-type architecture outward on the network and saving transport costs by avoiding the need to backhaul traffic to Qwestlink sites. Finally, Ethernet technology, which is used in LAN-type environments, often involves multi-functional equipment that is used for interconnection but is also used for aggregating and switching functions.

D. Line Cards

In the *Second Further Notice*, the Commission sought comment on whether line cards are equipment necessary for interconnection or access to unbundled network elements.[15] As an incumbent LEC, Qwest has permitted CLECs to place their DSLAMs in a Qwest central office as part of the line sharing architecture. Specifically, CLECs may place a splitter either in their cage or in a shared splitter bay in the central office. Although next generation line cards support several functionalities and may be the electronic device that delivers a copper pair to the switch, it would be premature to require line card collocation on a general basis since implementation issues such as equipment interoperability have not been resolved. While it does not seem likely that line card collocation will prove feasible in the circuit switching world, the Commission should stand ready to revisit line

[15] *Second Further Notice* at ¶ 82.

card collocation in conjunction with technologies other than circuit switching, consistent with the Act and the changing marketplace.

E. Limitations on Services Provided by a Collocator

The Commission also sought comment on how any limitation placed on the telecommunications services a collocator may provide would further the purpose behind section 251(c)(6) and the goals of the Act, or would otherwise be just, reasonable, and nondiscriminatory and satisfy sections 251(c)(2) and (3).[16] Qwest does not believe that any limitation (other than technical feasiblity) placed on the telecommunications services that a collocator provides with its equipment out of its collocation space would be just and reasonable. Once a collocator lawfully obtains a collocation arrangement (i.e., by placing equipment that is necessary and used for interconnection or access to UNEs), no restrictions (other than technical feasibility) should be placed on the telecommunications services provided by the collocator. Moreover, if a piece of collocated equipment is primarily used for interconnection or access to UNEs (i.e., for telecommunications services), Qwest sees no reason to prohibit ancillary use of the equipment for non-telecommunications services such as the provision of enhanced services. If the collocator were to stop using the functionality of the equipment that is necessary and actually used for interconnection or access to UNEs—i.e., if the CLEC were to stop using the functionality upon which the necessary test for collocation was met—then the CLEC would no longer be entitled to remain in the collocation space.

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[16] *Second Further Notice* at ¶ 83.

F. Cross Connections between Collocators

In the *Second Further Notice*, the Commission sought comment on whether section 251(c)(6) encompasses cross-connects between collocators such that a cross-connect between collocators is deemed "necessary for interconnection or access to unbundled network elements" within the meaning of section 251(c)(6), and if so, whether section 251(c)(6) encompasses both direct interconnection (i.e., direct physical links between the collocators' facilities or equipment) and indirect interconnection (i.e., links through the incumbent's facilities or equipment).[17]

As suggested above, as long as the primary purpose of the collocated equipment meets the "necessary" standard, then other functions of the equipment or purposes accomplished by the collocation should be permissible, subject to a reasonableness standard. Accordingly, Qwest does not believe that it would be just and reasonable to deny a collocator, who otherwise meets the "necessary" standard, additional incidental (and reasonable) uses of the collocation space, such as cross-connects to other CLECs that are otherwise lawfully collocated in that central office. Qwest believes that it would not be just and reasonable to prohibit a CLEC from cross-connecting with other CLECs when those CLECs have otherwise legitimately obtained collocation under the Act (i.e., for interconnection or access to UNEs).

The Act, however, does not allow a CLEC to obtain collocation from an incumbent LEC for the *sole or primary purpose* of cross-connecting to other CLECs. Indeed, cross-connecting to other CLECs does not equate to interconnection with

[17] *Second Further Notice* at ¶ 88.

the [incumbent] local exchange carrier's network,"[18] or access to the unbundled network elements of the incumbent LEC;[19] nor can it be argued that cross-connects are necessary to access the UNEs of, or achieve interconnection with, the incumbent LEC as required by section 251(c)(6).[20] Where a CLEC does not otherwise meet the standards set forth in that provision, there can be no justification (or authority) for requiring the incumbent LEC to permit such cross-connects.

The Commission further sought comment concerning whether the time intervals necessary for provisioning and constructing cross-connects would vary depending upon whether they are constructed by an incumbent LEC or a competitive LEC.[21] Qwest agrees with the suggestion in the *Second Further Notice* that time intervals for provisioning some parts would vary between incumbent LEC and CLEC. This is based of the fact that each may use different vendors to purchase products like cable and termination blocks. Intervals are also affected by varying shipping intervals. Qwest is currently considering a number of options, including the possibility of standard intervals, which would be based in part on whether cable racking already exists in the path for the cross-connect. The Commission also inquired whether there are any circumstances in which it should require that an incumbent LEC permit collocators to construct their own cross

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[18] 47 U.S.C. § 251(c)(2).

[19] 47 U.S.C. § 251(c)(3).

[20] This might not always be true, however. For example if a CLEC-to-CLEC cross-connection enables one CLEC to access UNES through the facilities of the second CLEC, this might meet the statutory test.

[21] *Second Further Notice* at ¶ 90.

connections as opposed to obtaining them from the incumbent[22]. Such construction would invariably implicate security and safety concerns, and we submit that the Commission cannot require incumbents to permit CLECs to construct their own cross-connections. The use of approved vendors contracted by the CLECs would be a reasonable option, however. After a CLEC's collocation application, and feasibility studies and quote are completed, Qwest engineering, upon receipt of 50% down payment, would determine the cable path, issuing a job to place cable racking if needed. The requesting CLEC would then be responsible for contracting with a Qwest-approved vendor to place any needed racking and the equipment cabling. In either case, the cable must enter Qwest cable racking space and travel through fire stopped floor holes. Given these considerations, only approved vendors should install/construct cross-connections, and the incumbent LEC should control the path of any racking or cable to be used or placed.

G. Points of Entry into Incumbent LEC Central Offices

The Commission sought comment on whether incumbent LECs should exercise exclusive discretion over determining which manholes will act as a point of entry for collocated carriers, whether it is technically feasible for incumbent LECs to designate one or two points of entry into the central office, and whether the Commission may require incumbent LECs to permit cross-connecting collocators to utilize the same point of entry into the central office.[23]

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[22] *Second Further Notice* at ¶ 91.

[23] *Second Further Notice* at ¶ 92.

For its in-region territory, Qwest has, whenever technically and operationally feasible, designated two manholes as the points of entry into a particular central office. These manholes are built on two different sides of the central office for redundancy purposes (when requested). Qwest pre-provisions fiber cables for the CLEC community to splice their fiber into this Qwest-provided cable. This process ensures speedy access by the CLECs to their collocation space and ensures that every CLEC is treated the same. Furthermore, Qwest engineers these manholes to be as close as possible to the cable vault and ensures that adequate conduit capacity exists for the CLECs. This process also ensures minimum disruption to the PSTN and substantially reduces the risk of a fiber cut due to increased activity in the existing manholes. Any requesting CLEC can enter the central office through either manhole.

Out of region, Qwest has encountered a number of challenges with the incumbent LECs specific to the question of identification or determination of the manholes that Qwest should use in order to access its collocation space:

Governing Contract: In many instances where Qwest has right-of-way ("ROW") and conduit access provisions in its interconnection agreement, those provisions have not been honored by the incumbent LEC and Qwest has been required to execute a totally separate Conduit Access and Right of Way Agreement with the incumbent LEC before it will designate manholes and provide Qwest with a license to occupy the manhole. Qwest encountered this problem in the Bell Atlantic region, however similar issues exist in the other incumbent LEC regions.

For example, in California, Qwest has duplicate conduit access/ROW agreements: there are provisions in its interconnection agreement, and there are three separate regional contracts (LA 124 for Los Angeles; NO344 for Northern California; and S1709 for Southern California). In Missouri, Qwest opted into an agreement that included conduit access/ROW provisions, while at the same time SBC presented Qwest with a separate conduit access agreement. Qwest has noticed a trend by the incumbent LECs to attempt to exclude Conduit Access/ROW provisions from new interconnection agreement templates so that in the future, CLECs will be required to have totally separate contracts to address these issues.

Qwest urges the commission to require incumbent LECs to:

- honor the ROW/conduit access provisions of the interconnection agreements and prohibit the incumbent LECs from requiring separate, duplicate contracts in order to obtain access to manholes; and
- ensure that CLECs can continue to have the option of having ROW/or conduit access issues addressed as part of a single, comprehensive interconnection agreement that must be filed and approved by the state commissions.

Manhole Assignment: the process of obtaining access to manholes varies by incumbent LEC—and often within an incumbent LEC, the process varies by region. For example, in the SWBT territory of SBC, the process of having manholes assigned is included in the collocation application process. However, in the Ameritech territory and the Pacific Bell territory, completely separate manhole applications must be submitted. In Ameritech, the applications can be submitted to a centralized Structure Access Center, however in Pacific Bell, the applications must be filed with a variety of regional contacts depending upon the city in which

the manholes are required. In addition, in California, Pacific Bell will not accept applications from personnel at a CLEC whose names are not pre-designated on a list that the CLEC must maintain with Pacific Bell (a CO 4926 form). Finally, Qwest has encountered delays in having incumbent LECs assign manholes until the incumbent LEC is provided a detailed map of Qwest's local network – a map which is not necessary in order for the incumbent LECs to assign the manholes on their own network.

Two scenarios are prevalent in the identification and assignment of manholes:

- The incumbent LEC identifies all the possible manholes serving a central office; the CLEC selects the manholes they prefer and applies for them; the incumbent LEC researches those manholes and responds whether space is available;
- The incumbent LEC simply designates manholes in which space is known to be available.

Qwest's preference is for the incumbent LEC to determine the manholes in which space is available, and we will build our network to those manholes. Any other process that requires the exchange of manhole information, maps, and space availability only builds delay-time into the planning and construction process.

Beyond the assignment of manholes, Qwest has also encountered problems with the exchange of network-critical information related to those manholes on a timely basis. Qwest needs to know the identity of the manholes as well as the footage measurements from the manhole to the collocation space (including the footage to the vault, the riser and the actual collocation space), so that Qwest can

leave sufficient fiber in the manhole to reach its collocation space. Any delays in receiving this information can jeopardize a network construction project. The Commission should require the incumbent LECs to establish clearly defined processes and intervals for providing this information in writing to the CLEC. Our experience has been that the processes are not uniform, or where there are processes defined, they are not being followed.

Finally, on a related note, Qwest has also had problems with having the fiber–pull from the manhole to the cage completed on a timely basis. This is a critical piece of the puzzle—if there are established intervals for delivery of the collocation space, and established intervals for access to the manholes, but no defined process or interval to have the fiber pulled from the manhole to the collocation space, then equipment could be installed for months but not be able to be put into service due to the incumbent LEC's failure to schedule and pull the fiber on a timely basis. Qwest has encountered intervals as short as 10 days and as long as 80 to have fiber pulled to its collocation space.

To solve the above problems, the Commission should instruct the incumbent LECs to establish uniform processes for managing the application for and assignment of manholes required for collocation, with defined intervals for the exchange of network information. In addition, the Commission should require the incumbent LECs to continue to include the conduit access/ROW provisions in their interconnection agreements, and should prohibit the imposition of unnecessary administrative "pre-requisites" to the acceptance of manhole application (such as

Pacific Bell's requirement that all personnel submitting applications be pre-registered with them on a CO 4926 form). Finally, the Commission should require the incumbent LECs to establish and publish defined processes and intervals for pulling fiber to a collocation cage; where the CLEC can have the fiber in the manhole by a specified deadline, the timeframe for pulling the fiber should be included in the collocation interval itself. However, where the fiber arrives in the manhole after a designated timeframe, the incumbent LEC should have a defined interval, such as 10 days, to have the fiber pulled.

H. Selection of the Actual Physical Collocation Space

In the *Second Further Notice*, the Commission sought comment on whether the incumbent, as opposed to the requesting carrier, should select a requesting carrier's physical collocation space from among the unused space in the incumbent's premises.[24] We submit that the incumbent LEC should determine the placement of collocation in the central office for several reasons. First, the incumbent LEC is the owner of the central office, and is responsible for the provision of telephony as the provider of last resort. Only the incumbent LEC can plan the appropriate overall functional use of the central office over the expected life of the building. The incumbent LEC is responsible for the common systems of power and HVAC for the central office and is responsible for the functioning of the central office in the event of an emergency or disaster. For all of the above reasons, the incumbent LEC should make the determination on placement of collocation in the central office.

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[24] *Second Further Notice* at ¶ 96.

Furthermore, the Commission need not (and should not) promulgate additional rules or establish criteria by which the incumbent LEC must select collocation space. Section 251(c)(6) already provides that the incumbent LEC must provide collocation on "just, reasonable, and non-discriminatory" terms. If the incumbent LEC, for example, intentionally placed a requesting carrier in a collocation space that is difficult to use or isolated when more suitable space is available, such a practice could violate section 251(c)(6) as a failure to provide collocation on just and reasonable terms, unless the incumbent LEC can provide a legitimate business reason for doing so. In short, incumbent LECs must act reasonably under the Act, and additional rules are unnecessary.

The Commission also sought comment concerning the circumstances in which the placement of collocators in a room or isolated space separate from the incumbent's own equipment would violate the Act, as well as how such placement would otherwise affect the cost of obtaining collocation.[25] Qwest allows collocation where space is available on a first-come, first-served basis. Moreover, whenever possible, Qwest places all collocation areas within its central offices (rather than in adjacent areas). If, however, no space is available in the central office, Qwest might be forced to place collocation areas on separate floors or in adjacent areas. . The length of time and the cost of conditioning this space would depend on several factors such as: power availability, HVAC availability, racking availability, and conduit availability. This scenario would also apply to space availability in remote

[25] *Second Further Notice* at ¶ 96-97.

among other measures, in the *Collocation Provisioning Order*.[7] The *Order* purports to continue the Act's primary reliance on carriers and state commissions to establish the particular terms of interconnection agreements. Accordingly, it imposes a 90-day maximum provisioning interval *only* where (a) a requesting party and incumbent LEC have failed to agree on an appropriate provisioning interval, or (b) a state has not set its own provisioning interval.[8]

Where a collocation provisioning interval will be implemented through a new or amended interconnection agreement, the effect of the Commission's default rule is relatively straightforward: It will apply failing the adoption of a different interval through the negotiation or arbitration processes described in section 252.[9] Where an SGAT or tariff is involved, however, implementation of this rule is less clear. Paragraph 36 of the *Order* addresses these circumstances:

> In some instances, a state tariff sets forth the rates, terms, and conditions under which an incumbent LEC provides physical collocation to requesting carriers. An incumbent LEC also may have filed with the state commission a statement of generally available terms and conditions (SGAT) under which it offers to provide physical collocation to requesting carriers. Because of the critical importance of timely collocation provisioning, we conclude that, within 30 days after the effective date of this Order, the incumbent LEC must file with the state commission any amendments necessary to bring a tariff or SGAT into compliance with the national standards. At the time it files these amendments, the incumbent must also file its request, if any, that the state set intervals longer than the national standards as well as all supporting information. For a SGAT, the national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission specifies other application processing or provisioning intervals for a particular type of collocation arrangements, such as cageless collocation. Where a tariff must be amended to reflect the national standards, those standards shall take effect at the earliest time permissible under applicable state requirements.[10]

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[7] *See Collocation Provisioning Order* ¶¶ 14-69.

[8] *See id.* ¶ 22.

[9] *See id.* ¶¶ 33-35.

[10] *Id.* ¶ 36.

The need for clarification arises from the fact that amendments to an SGAT become effective within 60 days of the incumbent LEC's submission *regardless* of whether the state commission has completed its review of the amendment. *See* 47 U.S.C. § 252(f)(3). Notwithstanding this statutory provision, the *Order* arguably could be read to require an *affirmative ruling* by a state commission before an SGAT that contains some provisioning interval other than the Commission's 90-day default interval becomes effective.[11]

ARGUMENT

I. THE COMMISSION SHOULD CLARIFY THAT AN INCUMBENT LEC MAY RELY ON THE PROVISIONING INTERVAL SPECIFIED IN AN AMENDED SGAT REGARDLESS OF WHETHER A STATE COMMISSION AFFIRMATIVELY APPROVES THE AMENDMENT OR INSTEAD ALLOWS IT TO TAKE EFFECT BY OPERATION OF LAW.

As the Commission has recognized, while a 90-day provisioning interval for collocation space may be appropriate in some situations, circumstances inevitably will exist in which a longer interval is necessary.[12] For example, "conditioning space in a premises [may be] particularly difficult,"[13] and forecasts of demand by CLECs may be inadequate for the incumbent to plan for the necessary construction.[14] As a general matter, the *Order* appropriately recognizes the need to rely on the negotiation and arbitration processes established in section 252 of the Act to tailor provisioning intervals to particular circumstances.[15]

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[11] *See id.* ("national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission *specifies* other application or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation") (emphasis added). Similarly, where a tariff amendment that proposes an interval longer than 90 days takes effect without affirmative action by a state commission, it is unclear whether the Commission would require the incumbent LEC subject to the default 90-day rule.

[12] *See, e.g., id.* ¶ 22.

[13] *Id.*

[14] *See id.* ¶ 16 (citing comments of Bell Atlantic at 10-11).

[15] *See id.* ¶ 22; *see also id.* ¶ 37 ("States will continue to have flexibility to adopt different intervals and additional collocation requirements, consistent with the Act.").

With respect to tailoring intervals through the SGAT process, however, the *Order* is ambiguous. On the one hand, the Commission has acknowledged that incumbents' amendments to their SGATs may include "intervals *longer* than the national standards," provided the incumbent provides supporting information.[16] Read in light of section 252(f)(3) of the Act, this acknowledgment should mean that, where (a) an incumbent has a good-faith basis for establishing a provisioning interval of longer than 90 days, (b) the incumbent includes such an interval within its amended SGAT and provides supporting information, and (c) the relevant state commission approves the amended SGAT by failing to take any contrary action within 60 days of the submission, the incumbent may rely on the longer provisioning interval.[17] On the other hand, the *Order* includes some language that could be read to provide that a longer provisioning interval will be effective only if a state commission makes an *affirmative* ruling to that effect.[18]

The Commission should clarify that the former reading is the correct one. Applying the default 90-day interval after a state commission has declined to reject an amended SGAT would be inconsistent with section 252(f)(3), as well as with the Act's primary reliance on carriers and state commissions to establish specific interconnection provisions.[19] Such an interpretation also would be inconsistent with the general recognition in the *Order* that the national default will

[16] *See id.* ¶ 36 (emphasis added).

[17] *See* 47 U.S.C. § 252(f)(3)(B). By this filing, Qwest does not suggest that a state order extending the provisioning interval for reasons other than forecasting deficiencies or construction requirements would be reasonable.

[18] *Collocation Provisioning Order* ¶ 36 ("national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission *specifies* other application or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation") (emphasis added).

[19] *See generally* 47 U.S.C. § 252.